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IN THE

SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1973

NO. 72-1255

RAYMOND W. VOWELL, COMMISSIONER OF PUBLIC WELFARE, STATE OF TEXAS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,

Petitioner

vs.

CONSUELO LOPEZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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RESPONSE NOT PRINTED

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The Petitioner, Raymond W. Vowell, Commissioner of Public Welfare, State of Texas, individually and in his official capacity, Defendant-Appellee, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the U. S. Court of Appeals for the Fifth Circuit entered in this proceeding on January 9, 1973.

OPINION BELOW

The opinion of the Court of Appeals for the Fifth

Circuit reversing the judgment of the District Court for the Southern District of Texas is reprinted in the Appendix, infra, pp. 1A-9A.

JURISDICTION

The judgment of the U. S. Court of Appeals for the Fifth Circuit was entered on January 9, 1973. This Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1) and (2).

QUESTIONS PRESENTED

This suit involves the right of a non-parent caretaker relative in the State of Texas to receive public aid benefits under the State-administered, but federally assisted program of Aid to Families with Dependent Children (AFDC).

STATEMENT OF THE NATURE OF THE CASE

The trial court correctly held that the State of Texas, with its broad discretion in defining need, has the power to determine that all married caretaker relatives who live with their spouses are not eligible to receive AFDC assistance. The trial court held that the state regulation in question was reasonable and did not contravene the provisions of the Social Security Act. A portion of the opinion of the trial court is reprinted in the Appendix, infra, pp. 10A-14A. The court of appeals reversed the decision of the trial court and held that the regulation in question was inconsistent with Section 406 of the Social Security Act (42 U.S.C.A. 606) and, therefore, violative of the Supremacy Clause of the Constitution. It is submitted that the state regulation is not in conflict with the provisions of the Social Security Act and that the decision of the trial court is in all things correct.

REASONS FOR GRANTING THE WRIT

1. The Social Security Act does not require that an AFDC program pay for the caretakers. Rather, this is permissive. Representatives of the federal government have repeatedly advised the State Welfare Department that some states do not set their AFDC programs up on a basis for paying caretakers but pay only for the AFDC eligible children.

2. Texas law is clear that a spouse is responsible to pay for the care of his spouse. Consequently, there is no way that the children's funds could be protected if welfare benefits are paid for the total care of the family as all of the family would end up living on the resources of the children.

3. The opinion of the U. S. Court of Appeals will force the State Welfare Department into a position of paying for children in every stepparent situation in the State of Texas where the spouse who does not take care of the children makes the decision that he or she does not want to support the other spouse and the children.

4. The State of Texas has the power to determine how limited welfare funds will be expended and the regulation is reasonable and necessary to equitably distribute such limited funds where the regulation does not conflict with the provisions of the Social Security Act.

ARGUMENT AND AUTHORITIES

Paragraph (c) of Section 406 of the Social Security Act (42 U.S.C.A. 606) provides as follows:

> "(c) The term '*relative* with whom any dependent child is living' means the individual who is one of the relatives specified in subsection (a) of this

section and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home." (Emphasis supplied.)

This Section provides for aid to a "relative" and does not provide for aid to more than one relative caretaker. The trial court opinion that the state regulation was reasonable and did not contravene the provisions of the Social Security Act was correct. The opinion of the U. S. Court of Appeals holding the state regulation to be in conflict with the Social Security Act is clearly erroneous.

A case directly in point is *Jefferson vs. Hackney*, 92 S.Ct. 1724, 406 U.S. 535 (decided May 30, 1972), which expressly held that the Texas State Constitution provides a ceiling on the amount the state can spend on welfare assistance grants and that the state has the power to determine how to allocate and pay out the limited benefits. The Supreme Court stated:

> "Striking the proper balance between these competing policy considerations is of course not the function of this Court. 'There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program.' King v. Smith, 392 U.S. 309, 318-319 (1968) (footnotes omitted). So long as the State's actions are not in violation of any specific provision of the Constitution or the Social Security Act, appellants' policy arguments must be addressed to a different forum." (92 S.Ct. 1729)

The state regulation in issue is reasonable and proper and does not conflict with the federal law.

In *Jefferson vs. Hackney*, supra, the Supreme Court further held as follows:

> "This Court emphasized only recently, in Dandridge v. Williams, 397 U.S. 471, 485 (1970), that in 'the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect.' A legislature may address a problem 'one step at a time,' or even 'select one phase of one field and apply a remedy there, neglecting the others.' Williamson v. Lee Optical Co., 348 U.S. 483, 488 (1955). So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and needy are not subject to a constitutional straitjacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them." (92 S.Ct. 1731)

Finally, the Court held:

> "In conclusion, we re-emphasize what the Court said in Dandridge v. Williams, 397 U.S., at 487: 'We do not decide today that the (state law) is wise, that it best fulfills the relevant social and economic objectives that (the state) might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court . . . [T]he Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.' " (92 S.Ct. 1734)

The statutory analysis in AFDC cases must consider that "the federal law gives each state great lati-

tude in dispening its available funds." *Dandridge vs. Williams*, 397 U.S. 471, 478 (1970). There is no question that states have the power to determine the standard of need and the level of benefits, *Dandridge, supra; Stinson v. Finch*, 317 F.Supp. 581 (ND Ga. 1970); *Conner v. Finch*, 314 F.Supp. 364 (ND Ill. 1970) aff'd 400 U.S. 1003 (1971); *Westberry v. Fisher*, 297 F. Supp. 1109 (D. Maine S.D. 1969); and to uphold a state regulation, "It is enough that a solid foundation for the regulation can be found in the State's legitimate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor". *Dandridge, supra*, p. 486. Of great importance in analzing a state regulation is whether the regulation is related to need; a regulation which does not consider the financial situation of a family may be struck down. *King v. Smith*, 392 U.S. 309 (1968).

With these propositions in mind, it may be seen that the regulations here in question (Sections 3411 and 3454) are directly related to the state's determination of need. The regulations set forth the requirements which custodians of dependent children must meet to themselves be eligible for AFDC payments. Under Section 3411, if the relatives with whom the children live are married and neither is incapacitated nor the recipient of categorical assistance, the state has determined that only the needs of the children may be budgeted. This is clearly a determination of need by the state and is valid. One of the statutory requirements is that "aid to families with dependent children . . . shall be furnished with reasonable promptness to all eligible individuals . . ." 42 U.S.C.A. 602 (a) (10). There is no question here that the children involved are receiving aid. The Constitution does not empower

federal courts to "second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients". *Dandridge, supra,* p. 487. Eligibility factors limiting eligibility to those dependent children living with relatives in a specified degree (as in Section 3454 of the *Financial Services Handbook*) are consistent with the general policy declarations of the Social Security Act and are not unconstitutional. *Cheley v. Burson,* 324 F.Supp. 678 (ND Ga. 1971). "From its inception, the Act has defined 'dependent child' in part by reference to the relatives with whom the child lives. When a 'dependent child' is living with relatives, then 'aid' also includes payments and medical care to those relatives, including the spouse of the child's parent." *Dandridge, supra,* p. 479. It is undisputed that a state may consider the relative with whom a child lives when computing welfare payments, and it is clear that Texas does so when it determines that a need exists. See Section 3411.

If the state legitimately and reasonably determines that need in certain cases does not exist, it is certainly not required under the Act to expend its funds. As to Plaintiff Consuelo Lopez and all others similarly situated, regulations Sections 3411 and 3454 of the *Financial Services Handbook* are reasonable, do not contravene the provisions of the Social Security Act, and are not unconstitutional. The state has, under its power to determine need, found that married persons who care for dependent children do not require more than the payments for the children themselves, when neither spouse is the recipient of categorical assistance.

CONCLUSION

The regulation in question does not conflict with any

provision of the federal Social Security Act and the opinion of the trial court should be sustained. For the foregoing reasons the Petition for Certiorari should be granted.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Jack Sparks, Assistant Attorney General of the State of Texas, am a member of the Bar of the Supreme Court of the United States, and I do hereby certify that three copies of the foregoing petition for a Writ of Certiorari have been forwarded by United States Mail, postage prepaid to the attorneys for Consuelo Lopez, et al., Nancy Duff Levy, Steven J. Cole and Henry A. Freedman, NLSP Center of Social Welfare Policy and Law, 25 W. 43rd Street, 12th Floor, New York, New York 10036, and J. L. Covington, Cameron County Legal Aid Society, 1205 E. Monroe Street, Brownsville, Texas 78250.

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